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SUPREME PEOPLE’S COURT ANNUAL REPORT ON INTELLECTUAL PROPERTY CASES (2013) (CHINA)

Translated by Tong Li, Xiaohan Lou, Zhenan Wang, Qiuwen Xu[†]

Abstract: The Supreme People’s Court of China began publishing its Annual Report on Intellectual Property Cases in 2008. The annual reports, published in April of each year, summarize and review new intellectual property cases. This translation includes all 30 cases and 39 legal issues of the 2013 Annual Report. It addresses patent law, trademark law, copyright law, unfair competition, contractual intellectual property rights, liability of intellectual property infringement, and intellectual property litigation procedure and evidence. While China is not a common law country, these cases and guidelines provide lower courts with meaningful insight and direction.¹

I. INTRODUCTION

In 2013, the Supreme People’s Court of China accepted 594 new intellectual property (“IP”) cases and issued 548 decisions. In comparison, in 2012, the Court accepted 359 IP cases and issued 366 decisions. The characteristics and trends that this report reflects include:

- (1) The growth in IP cases resulted in an increase of 65.46% in the accepted number of cases by the Supreme People’s Court of China.
- (2) The increasing net worth and market value of patent technologies resulted in more complex cases.
- (3) There has been an overall increase in administrative patent cases, and more specifically the proportion of pharmaceutical, electronics, and communication cases has grown.
- (4) A large number of patent cases involved issues of claim interpretation.
- (5) The proportion of trademark cases has remained stable, but there has been an increase in the number of cases involving the preemption of trademark registration.
- (6) There has been a rapid increase in the number of cases involving disputes over the infringement of rights of new plant varieties.
- (7) The number of copyright cases involving emerging fields, such as software, animation, and applied arts in cultural and creative industries, continues to increase, and many of these cases are correlated with one another.

- (8) The number of unfair competition cases relating to network technology, new business model, and counterfeit action disputes has also increased.
- (9) For the first time this year, the Supreme People's Court decided on cases dealing with monopolies.

THIS ANNUAL REPORT ADDRESSES 30 CASES AND 39 LEGAL ISSUES PERTAINING TO PATENT LAW, TRADEMARK LAW, COPYRIGHT LAW, UNFAIR COMPETITION, CONTRACTUAL INTELLECTUAL PROPERTY RIGHTS, LIABILITY OF INTELLECTUAL PROPERTY INFRINGEMENT, AND INTELLECTUAL PROPERTY LITIGATION PROCEDURE AND EVIDENCE.

II. PATENT CASES

一、专利案件审判

A. Civil Patent Cases

（一）专利民事案件审判

1. *Whether the Title of the Patent Limits the Scope of its Protection*

1. 主题名称对专利权保护范围是否具有限定作用

In *Harbin Industrial University Xinghe Industrial Co. v. Jiang Su Runde Pipe Industry Co.*,² which involved the alleged infringement of a sewer pipe patent, the Supreme People's Court provided that courts should consider the title of the patent when determining the scope of its protection. The impact of the patent title in limiting the scope of protection depends on its actual impact on the protected subject matter.

在再审申请人星河公司与被申请人润德公司侵害发明专利权纠纷案【(2013)民申字第790号】

（以下简称“排水管道”发明专利侵权案）中，最高人民法院指出，在确定权利要求的保护范围时，应当考虑权利要求记载的主题名称；该主题名称对权利要求保护范围的实际限定作用取决于其对权利要求所要保护的主题本身产生何种影响。

2. *Determining the Scope of Patent Protection When a Parallel Patent Claim Cites to a Previous but Independent Patent Claim*

2. 并列独立权利要求引用在前独立权利要求时保护范围的确定

In the aforementioned case dealing with the alleged infringement of a sewer pipe patent, the Supreme People's Court further clarified that, although a previously cited patent claim should be considered in determining the scope of protection of a parallel but independent claim, such previous claims do not necessarily limit the scope of protection on other parallel claims. Whether such previous claims limit the scope of other claims depends on whether the previous claim's features substantially affect the technical solution or the protected subject matter of the parallel patent claim at hand.

在前述“排水管道”发明专利侵权案中，最高人民法院还指出，在确定引用在前独立权利要求的并列独立权利要求的保护范围时，虽然被引用的在前独立权利要求的特征应当予以考虑，但其对该并列独立权利要求并不必然具有限定作用，其实际的限定作用应当根据其对该并列独立权利要求的技术方案或保护主题是否有实质性影响来确定。

3. *Infringement Judgment Regarding Closed Claims*

In *Hebei Xinyu Welding Co. v. Yichang Monkey King Welding Wire Co.*,³ the Supreme People's Court held that for closed claims, the alleged features of an infringing product or method shall be deemed to fall outside of the scope of the patent protection, so long as the features are not technical and are not clearly recorded in the patent claim.

4. *Whether Adopting Reverse-Technical Solutions of Well-Defined Technical Methods Constitutes Infringement under the Doctrine of Equivalents*

In *Beijing Jerrat Spring Damper Technology Research Center v. Beijing JZTH Buffer Technology Co.*,⁴ the Supreme People's Court held that adopting reverse-technical solutions of well-defined technical methods of a patent does not constitute an infringement under the Doctrine of Equivalents, so long as the reverse-technical solutions have a reverse technical effect and cannot achieve the purpose of the original invention.

5. *Whether Changing the Order of Steps in a Process Patent Constitutes as an Infringement under the Doctrine of Equivalents*

In *Zhejiang Lesheros Household Articles Co. v. Chen Shundi*,⁵ the Supreme People's Court decided on the issue of whether the order of steps in a process patent limits the scope of patent protection. The Supreme People's Court noted that the issue of whether changing the order of steps

3. 封闭式权利要求的侵权判定

在再审申请人鑫宇公司与被申请人猴王公司侵害发明专利权纠纷案【(2013)民申字第1201号】中, 最高人民法院指出, 对于封闭式权利要求, 如果被诉侵权产品或者方法除具备权利要求明确记载的技术特征之外, 还具备其他特征的, 应当认定其未落入权利要求保护范围。

4. 采用与权利要求限定的技术手段相反的技术方案是否构成等同侵权

在再审申请人捷瑞特中心与被申请人金自天和公司等侵害实用新型专利权纠纷案【(2013)民申字第1146号】中, 最高人民法院认为, 被诉侵权技术方案的技术手段与权利要求明确限定的技术手段相反, 技术效果亦相反, 且不能实现发明目的的, 不构成等同侵权。

5. 改变方法专利的步骤顺序是否构成等同侵权

在再审申请人乐雪儿公司与被申请人陈顺弟等侵害发明专利权纠纷案【(2013)民提字第225号】中, 最高人民法院指出, 方法专利的步骤顺序是否对专利权的保护范围起到限定作用, 从而导致发生步骤顺序改变时限制等

constitutes an infringement under the Doctrine of Equivalents or would limit the application of the doctrine depends essentially on whether the steps of the process need to be executed in a specific order and whether any changes to the order would result in substantially different technical functions or effects.

同原则的适用，关键在于所涉步骤是否必须以特定的顺序实施以及这种顺序改变是否会带来技术功能或者技术效果的实质性差异。

6. *The Meaning of “Same or Similar Types of Products” in a Design Patent Infringement Judgment*

6. 外观设计专利侵权判定中相同或相近种类产品的认定

In *Jinjiang Qingyang Weiduoli Food Co. v. Zhangzhou Yueyuan Food Co.*,⁶ the Supreme People’s Court provided that in a design patent infringement claim, whether the products are of the “same or similar type” depends on whether the products fulfill the same or similar utility purposes and functions. Courts may also consider information regarding the products’ sales and actual uses as referencing factors.

在再审申请人维多利公司与被申请人越远公司等侵害外观设计专利权纠纷案【（2013）民申字第1658号】中，最高人民法院指出，在外观设计专利侵权判定中，确定产品种类是否相同或相近的依据是产品是否具有相同或相近似的用途，产品销售、实际使用的情况可以作为认定用途的参考因素。

B. *Administrative Patent Cases*

（二）专利行政案件审判

7. *Similarities and Differences of Claim Interpretation Methods in Patent Prosecution and Civil Litigation Cases*

7. 权利要求的解释方法在专利授权确权程序和民事侵权程序中的异同

In *Seiko Epson Co. v. Patent Reexamination Board of SIPO*,⁷ which involves the invalidation of a cartridge patent, the Supreme People’s Court noted that the interpretation methods of a claim in patent prosecution and those in civil litigation may have fundamental similarities but may also differ in certain situations. The Supreme People’s Court held that differences in the interpretation methods would manifest primarily in the parties’ statements of

在再审申请人精工爱普生与被申请人专利复审委员会等发明专利权无效行政纠纷案【（2010）知行字第53-1号】（以下简称“墨盒”专利无效行政案）中，最高人民法院认为，专利权利要求的解释方法在专利授权确权程序与专利民事侵权程序中既有根本的一致性，又在特殊场合下体现出一定的差异性，其差异突出体现在当事人意见陈述的作用上；在

opinion. In patent prosecution, the applicant's statement of opinion acts only as a reference to understanding the patent specification and patent claims, rather than being treated as the decisive basis.

8. *Written Description Requirements of the Invention's Medical Use*

In *Cubist Pharmaceuticals, Inc. v. Patent Reexamination Board of SIPO*,⁸ which involves the invalidation of "the method of antibiotics administration" patent, the Supreme People's Court noted that during the prosecution of a patent, if the nature of the invention and its improvement on existing technology manifest on the invention's medical use, the claim should be categorized as a "pharmaceutical method" claim. Furthermore, the protection scope of such a claim should be limited by the technical features associated with the pharmaceutical.

9. *Whether the Features Producing No Certain Toxic Side Effects have the Effect of Limiting the Medical Use Invention Which the Claims Request to Protect*

In the aforementioned case regarding invalidation of "the method of administration of antibiotics" patent, the Supreme People's Court held that the features of patent claims, which do not produce any certain toxic side-effects, shall not limit the invention's medical use that the claims seek to protect, so long as such features have neither changed the known objects in treatment or the known indication, nor discovered any new properties of such

专利授权确权程序中, 申请人在审查档案中的意见陈述原则上只能作为理解说明书以及权利要求书含义的参考, 而不是决定性依据。

8. 物质的医药用途发明的撰写要求

在再审申请人卡比斯特公司与被申请人专利复审委员会发明专利权无效行政纠纷案【(2012)知行字第75号】(以下简称“抗生素的给药方法”发明专利无效行政案)中, 最高人民法院指出, 如果发明的实质及其对现有技术的改进在于物质的医药用途, 申请专利权保护时, 应当将权利要求撰写为制药方法类型权利要求, 并以与制药相关的技术特征对权利要求的保护范围进行限定。

9. 不产生特定毒副作用的特征对权利要求请求保护的医药用途发明是否具有限定作用

在前述“抗生素的给药方法”发明专利无效行政案中, 最高人民法院认为, 如果权利要求中不产生特定毒副作用的特征没有改变药物已知的治疗对象和适应症, 也未发现药物的新性能, 不足以与已知用途相区别, 则其对权利要求请求保护的医药用途发明不具有限定作用。

medicines that are sufficient to distinguish from the known uses.

10. Whether Drug Administration Features Limit the Scope of Requested Protection of a Drug Manufacturing Method

In the aforementioned case regarding invalidation of “antibiotic drug administration method” patent, the Supreme People’s Court held that the effects that drug administration features have on the drug manufacturing process should be judged and analyzed on a case-by-case basis; features that manifest only in drug administration are not technical features of drug applications and therefore will not limit the scope of protection on the drug manufacturing method.

11. Applicability of the Distinction Between Open and Close Claims in the Mechanical Field

In *Beijing Century Lianbao Fire-Fighting New Technology Co. v. the Patent Re-Examination Committee*,⁹ which involves the invalidation of the “fire extinguishing equipment” patent, the Supreme People’s Court held that the words “contain” and “include” have the meaning of not excluding contents that are not mentioned, thereby serving as an important indication of open claims. The distinction between open and closed claims generally applies in technical fields, such as chemistry and machinery.

10. 给药特征对权利要求请求保护的制药方法发明是否具有限定作用

在前述“抗生素的给药方法”发明专利无效行政案中，最高人民法院还认为，用药过程的特征对药物制备过程的影响需要具体判断和分析；仅体现于用药行为中的特征不是制药用途的技术特征，对权利要求请求保护的制药方法本身不具有限定作用。

11. 开放式与封闭式权利要求的区分适用于机械领域专利

在再审申请人世纪联保公司与被申请人专利复审委员会等发明专利权无效行政纠纷案【（2012）行提字第20号】（以下简称“灭火装置”发明专利无效案）中，最高人民法院认为，“含有”、“包括”本身就具有并未排除未指出的内容的含义，因而成为开放式专利权利要求的重要标志；开放式和封闭式权利要求的区分在包括化学、机械领域在内的全部技术领域有普遍适用性。

12. Recognition of Technical Features That Distinguish a Utility Model Patent from Other Patents in Open Claims

In the aforementioned case regarding invalidation of “fire extinguishing equipment” patent, the Supreme People’s Court held that when recognizing a technical feature that distinguishes a utility model patent with an open claim from a reference, if some technical feature in the reference was not mentioned in the open claim, the lack of this technical feature generally does not serve as a distinct technical feature of the open claim as compared to the reference.

13. The Existence of Technical Bias Should be Determined With the Consideration of the Overall Content of the Existing Technology

In *Arai Star Biology Science North America Co. v. The Patent Re-Examination Committee*,¹⁰ the Supreme People’s Court held that the existence of technical bias should be determined with the consideration of the overall content of the existing technology.

14. Determining Whether Modifications of Patent Application Documents Exceed its Scope

In *Shimano Co. v. The Patent Re-Examination Committee*,¹¹ which involved the invalidation of a “Rear Shifter” patent, the Supreme People’s Court noted that “the scope written in the original Specification and Claim” mentioned in Article 33 of People’s Republic of China (“PRC”) Patent

12. 开放式权利要求的区别技术特征的认定

在前述“灭火装置”发明专利无效案中，最高人民法院认为，认定开放式权利要求相对于对比文件的区别技术特征时，如果对比文件的某个技术特征在该开放式权利要求中未明确提及，一般不将缺少该技术特征作为开放式权利要求相对于对比文件的区别技术特征。

13. 技术偏见是否存在应结合现有技术整体内容进行判断

在申诉人阿瑞斯塔公司与被申请人专利复审委员会发明专利权行政纠纷案【（2013）知行字第31号】中，最高人民法院认为，现有技术中是否存在技术偏见，应当结合现有技术整体内容进行判断。

14. 专利申请文件修改超范围的判断

在再审申请人株式会社岛野与被申请人专利复审委员会等发明专利权无效行政纠纷案【（2013）行提字第21号】（以下简称“后换挡器”发明专利无效行政案）中，最高人民法院指出，专利法第三十三条中“原说明书和权利

Law should be understood as the overall content of the original specification and claim of the invention patent. The examination of whether modifications of the patent application documents exceed the aforementioned scope should take into consideration the technical characteristics and customs of the technical field, the knowledge and cognitive ability of a person with ordinary technical skill in the art, the inherent requirements of the technical solution, and so forth.

15. Modifying the “Non-invention” Part of the Patent Application and Its Remedies

In the aforementioned case regarding invalidation of “Rear Shifter” invention patent, the Supreme People’s Court also noted that if the modification of the “non-invention” part of patent application exceeds the scope written in the original Specification and Claim part of the application, relevant departments shall actively search for solutions and remedies to protect the creative value of inventions without awarding any unjust first-to-file benefits to the patent applicant. This is in order to avoid the loss of patent rights for creative inventions that contribute to existing technology and therefore deserve the protection.

16. Whether the Patent Examiner’s Approval to Modify the Patent Application Documents Grant Applicants Reliance-based Protection

In *Seiko Epson Co. v. Patent Reexamination Board of SIPO*,¹² the Supreme People’s

要求书记载的范围”应当理解为原说明书和权利要求书所呈现的发明创造的全部信息；审查专利申请文件的修改是否超出原说明书和权利要求书记载的范围，应当考虑所属技术领域的技术特点和惯常表达、所属领域普通技术人员知识水平和认知能力、技术方案本身在技术上的内在要求等因素。

15. 专利申请文件中“非发明点”的修改及其救济

在前述“后换挡器”发明专利无效行政案中，最高人民法院还指出，为避免确有创造性的发明创造因为“非发明点”的修改超出原说明书和权利要求书记载的范围而丧失其本应获得的与其对现有技术的贡献相适应的专利权，相关部门应当积极寻求相应的解决和救济渠道，在防止专利申请人获得不正当的先申请利益的同时，积极挽救具有技术创新价值的发明创造。

16. 申请人可否基于审查员对专利申请文件修改的认可获得信赖利益保护

在前述“墨盒”专利无效行政案中，最高人民法院还指出，是否

Court also noted that, as a matter of principle, modifying the patent application documents is the applicant's right; the patent administration department under the State Council exercises its authority to examine patent applications, but it does not have the responsibility of ensuring the absolute correctness of patent issuance. Therefore the applicant is responsible for the consequences of any modifications that are made.

17. The Effect of Opinion of a Party of Interest on the Determination of the Legality of Modifying Patent Application Documents

In *Seiko Epson Co. v. Patent Reexamination Board of SIPO*,¹³ the Supreme People's Court also held that in determining the legality of modifying patent application documents, the opinion of a party of interest on the subject generally only serves as a reference for interpreting the meaning of the claims and the specifications; the statement is not decisive. The reference value that such statements have depends on the content of the statements and its relationship to the specification and claims.

III. TRADEMARK CASES

A. Civil Trademark Cases

18. The Recognition and Use of a Generic Term

In *Shanxi Qinzhouhuang Millet (Group) Co. v. Tanshanhuang Development Co.*,¹⁴ the Supreme People's Court held that for commodities formed under historical traditions, customs, and geographic

对专利申请文件进行修改原则上是申请人的一项权利；国务院专利行政部门依法行使对专利申请进行审查的职权，但并不负有保证专利授权正确无误的责任，申请人对其修改行为所造成的一切后果应自负其责。

17. 判断专利申请文件修改是否合法时当事人意见陈述的作用

在前述“墨盒”专利无效行政案中，最高人民法院还认为，判断专利申请文件修改是否合法时，当事人的意见陈述通常只能作为理解说明书以及权利要求书含义的参考，而不是决定性依据；其参考价值的大小取决于该意见陈述的具体内容及其与说明书和权利要求书的关系。

二、商标案件审判

（一）商标民事案件审判

18. 商品通用名称的认定与正当使用

在再审申请人沁州黄公司与被申请人檀山皇发展公司等侵害商标权纠纷案【（2013）民申字第1642号】中，最高人民法院认

environments in relevant market, their ordinary name in that market may be regarded as a generic term. The registered trademark owner cannot claim trademark rights over the name of the commodity based on his or her promotion of the commodity, and he or she cannot forbid others from using the generic term to show the origin of the commodity.

为，因历史传统、风土人情、地理环境等原因形成的相关市场较为固定的商品，其在该相关市场内的通用称谓可以认定为通用名称；注册商标权人不能因其在该商品市场推广中的贡献主张对该商品的通用名称享有商标权，无权禁止他人使用该通用名称来表明商品品种来源。

B. Administrative Trademark Cases

(二) 商标行政案件审判

19. *Presumed Agents or Representatives under Article 15 of the PRC Trademark Law*

19. 商标法第十五条规定的代理人或者代表人身份的推定

In *Hsin Tung Yang Enterprise Inc. v. Hsin Tung Yang Co.*,¹⁵ the Supreme People's Court noted that a person who conspires with agents or representatives in a preemptive trademark registration may be deemed an agent or representative. Conspiracy in preemptive trademark registrations may be inferred from the circumstances and relationships between that person and the agents or representatives.

在再审申请人新东阳企业公司与被申请人新东阳股份公司、原审被告商标评审委员会商标异议复审行政纠纷案【(2013)知行字第97号】中，最高人民法院指出，与代理人或者代表人有串通合谋抢注商标行为的人，可以视为代理人或者代表人；判断是否构成串通合谋抢注行为，可以视情根据该人与代理人或者代表人的特定身份关系进行推定。

20. *The Application of and Exception to "Illegal Preemptive Registration of Well-Known Trademark That Has Been Used by Others" in Article 31 of PRC Trademark Law*

20. 商标法第三十一条“以不正当手段抢先注册他人已经使用并有一定影响的商标”的适用及其例外

In *Fushun Boge Environmental Protection Technology Co. v. Trademark Appeal Bd., Yingkou Fiberglass Co.*,¹⁶ the Supreme People's Court held that the intent to profit from someone else's existing trademark and reputation may generally be inferred if the

在再审申请人抚顺博格公司与商标评审委员会、营口玻纤公司商标争议行政纠纷案【(2013)行提字第11号】中，最高人民法院认为，一般情况下，商标申请人明知或者应知他人在先使用并有

applicant knew or should have known that the influential trademark had been used by someone else but still filed a registration application. This general assumption may be rebutted under special circumstances, finding that the bad faith intent to profit from the existing trademark and reputation did not exist, regardless of the trademark's influence.

21. A Trademark That is Not Used for a Long Period of Time Does Not Enjoy the Same Protection of an Unregistered But Influential Trademark, Nor Does It Enjoy Any Priority Rights

In *Yu Xiaohua v. Trademark Review & Adjudication Bd.*,¹⁷ the Supreme People's Court held that the term "certain influences" under Article 31 of the PRC Trademark Law shall mean a type of legal effect derived from continuous usage, and the term "priority right" shall refer to the trademark owner's right that is created on the application day of the disputed trademark. A trademark that is not used for a long period of time does not enjoy the reputation and influence of an unregistered trademark under Article 31 of the PRC Trademark Law, and thus neither constitutes an "unregistered but influential trademark," nor enjoys any priority rights.

22. The Meaning of "Other Improper Means" Under Article 41, Clause 1 of the PRC Trademark Law

In *Li Longfeng v. Trademark Review & Adjudication Bd.*,¹⁸ the Supreme People's Court held that the term "obtaining

一定影响的商标而申请注册即可推定其具有利用他人商标商誉获利的意图，但不排除特殊情况下，在先商标虽然已经具有一定影响，但商标申请人并不具有抢占在先商标商誉的恶意。

21. 长期停止使用的商业标识不能作为有一定影响的未注册商标或在先权利予以保护

在再审申请人余晓华与商标评审委员会、第三人成都同德福公司商标争议行政纠纷案【(2013)知行字第80号】中，最高人民法院指出，商标法第三十一条所称的“有一定影响”，应当是一种基于持续使用行为而产生的法律效果，“在先权利”应当是指至争议商标的申请日时仍然存在的现有权利；在长期停止使用的情况下，商业标识已经不具备商标法第三十一条所规定的未注册商标的知名度和影响力，不构成在先使用并有一定影响的商标或者在先权利。

22. 商标法第四十一条第一款规定的“其他不正当手段”的认定

在再审申请人李隆丰与被申请人商标评审委员会、一审第三人海棠湾管委会商标争议行政纠纷案

registration by other improper means” under Article 41, Clause 1 of the PRC Trademark Law refers to the ways of obtaining trademark registration that are not fraudulent but disturbs the order of trademark registration, impairs public interest, misappropriates public resources, or carries an improper purpose of seeking unfair benefits. A person filing for a trademark registration shall have an actual intent to use, and his or her registration act shall satisfy the standard of reasonability or justifiability.

23. *Name-Recognition of the Same Entity’s Different Trademarks May Radiate Under Certain Circumstances*

In *Bonnerie Cevenole S.A.R.L. v. Trademark Review & Adjudication Bd.*,¹⁹ the Supreme People’s Court held that the reputation of different registered trademarks of the same entity may radiate under certain circumstances. Before the date of application of the disputed trademark, if the logo of the disputed trademark has enjoyed the benefits of a long-term good reputation and widespread usage of similar logos under the same entity, and if the cited trademark enjoys no such reputation, the scope of the exclusive right of the cited trademark shall be limited.

IV. COPYRIGHT CASES

24. *Conditions for a Work with Both Utility and Aestheticity Enjoys Protection as a Work of Fine Art*

In *Lego Grp. v. Guangdong Loongon*

【（2013）知行字第41、42号】中，最高人民法院指出，商标法第四十一条第一款规定的“以其他不正当手段取得注册”，是指以欺骗手段以外的扰乱商标注册秩序、损害公共利益、不正当占用公共资源或者以其他方式谋取不正当利益的手段取得注册；民事主体申请注册商标，应该有使用的真实意图，其申请注册商标行为应具有合理性或正当性。

23. 同一主体的不同注册商标的知名度在特定条件下可以辐射

在再审申请人博内特里公司与被申请人商标评审委员会、名仕公司商标争议行政纠纷案

【（2012）行提字第28号】中，最高人民法院认为，同一主体的不同注册商标的知名度在特定条件下可以辐射；在争议商标申请日前，争议商标的标识因同一主体对相近似商标的长期广泛使用已经具有较高知名度，而引证商标不具有知名度的，引证商标的排斥权范围应受到限制。

三、著作权案件审判

24. 实用性 with 艺术性兼备的客体作为美术作品获得保护的条件

在再审申请人乐高公司与被申请

Animation & Toys Indus. Co.,²⁰ the Supreme People's Court held that the originality requirements for different kinds of works are different. Works of fine art require the expression of the author's unique creativity and ideology in the field of aesthetics. For works with both utility and aesthetic value, whether the creators may enjoy the same protection as the creators of fine art depends on the creator's unique personality and creativity delivered through intellectual labor in the field of aesthetics. Intellectual labor beyond the scope of aesthetics is irrelevant to the consideration of originality.

25. *Copyright Protection Scope and the Determination of Infringements for Three-dimensional Works of Fine Art*

In *Jingde Zhen Franz Indus. Co. v. Chaozhou Jialande Porcelain Co.*,²¹ the Supreme People's Court ruled that the protection of copyright laws does not extend to design ideas and their corresponding technics. A copyright holder may not monopolize the relevant design ideas and technics through copyright protection. A non-copyright holder may adopt the same design ideas and technics in designing and producing products of similar themes as long as they do not plagiarize the original expression of others.

V. UNFAIR COMPETITION CASES

26. *Inheritability of Rights Associated with Unique Packaging and Adornment of Famous Products*

In *Guilin Pharmaceutical Co., Ltd. v.*

人小白龙动漫公司等侵害著作权纠纷案【(2013)民申字第1262号至1271号、第1275号至1282号、第1327号至1346号、第1348号至1365号】中，最高人民法院指出，不同种类作品对独创性的要求不尽相同，美术作品的独创性要求体现作者在美学领域的独特创造力和观念；对于既有欣赏价值又有实用价值的客体而言，其是否可以作为美术作品保护取决于作者在美学方面付出的智力劳动所体现的独特个性和创造力，那些不属于美学领域的智力劳动则与独创性无关。

25. 立体造型美术作品的保护范围与侵权判断

在再审申请人法蓝瓷公司与被申请人加兰德公司侵害著作权纠纷案【(2012)民申字第1392号】中，最高人民法院认为，设计思路以及相应的工艺方法并非著作权法的保护对象，权利人不能通过著作权垄断相应的设计思路和工艺方法；他人可以采用同样的设计思路和工艺方法，设计并生产类似主题的产品，但不能抄袭他人具有独创性的表达。

四、竞争案件审判

26. 知名商品特有的包装、装潢权益能否承继

在再审申请人桂林南药公司与被

Sanmenxia Sinoway Pharmaceutical Co., Ltd.,²² which involved the alleged infringement of a design patent and the unauthorized appropriation of the unique packaging and adornment of well-known products, the Supreme People's Court held that the unique packaging and adornment of well-known products falls under the property rights protection provided by the Law Against Unfair Competition and that such rights are transferable and inheritable accordingly.

申请人赛诺维公司侵害外观设计专利权和擅自使用知名商品特有包装、装潢纠纷案【(2013)民提字第163号】中，最高人民法院指出，知名商品特有的包装、装潢属于反不正当竞争法保护的财产权益，依法可以转让和承继。

27. Relationship Between Particularity and Novelty Regarding Name, Packaging, and Adornment of Well-Known Products

27. 知名商品的名称、包装和装潢的特有性与新颖性的关系

In *Jilin Literature & History Press v. Chinese Press Co.*,²³ a case involving an alleged copyright infringement and unfair competition, the Supreme People's Court held that the uniqueness of the name, packaging, and adornment of a well-known product functions to distinguish the source of the product rather than the product's novelty and originality. Accordingly, the Court provided that even if the product's name, packaging, and adornment are not novel or original, this does not necessarily mean that the product is not unique.

在再审申请人华文出版社与被申请人吉林文史出版社等侵害著作权及不正当竞争纠纷案

【(2013)民申字第371号】

(以下简称《男人来自火星·女人来自金星》图书不正当竞争案)，最高人民法院指出，知名商品的名称、包装和装潢的特有性是指该商品名称、包装和装潢能够起到区别商品来源的作用，而不是指该商品名称、包装和装潢具有新颖性或者独创性；即使商品名称、包装和装潢不具有新颖性或者独创性，也不意味着其必然不具有特有性。

28. Information with No Market Attributes Are Not Trade Secrets

28. 不具有市场属性的信息不属于商业秘密

In *Wang Zhe'an v. Int'l Exch. & Cooperation Ctr.*,²⁴ which involved the alleged infringement of a trade secret, the Supreme People's Court held that the

在再审申请人王者安与被申请人卫生部国际中心等侵害商业秘密纠纷案【(2013)民申字第1238号】中，最高人民法院指出，反

“competition” regulated by the Law Against Unfair Competition is limited to market competition among business entities in a given market. Furthermore, the Supreme People’s Court provided that a trade secret is a market-based concept. Information that merely affords a person a competitive advantage among his colleagues at his place of employment is not considered to be a trade secret.

不正当竞争法所规范的“竞争”并非任何形式、任何范围的竞争，而是特指市场经营主体之间的“市场竞争”；商业秘密应以市场为依托，仅在单位内部为当事人带来工作岗位竞争优势的信息不属于商业秘密。

VI. CONTRACTUAL INTELLECTUAL PROPERTY RIGHTS CASES

五、知识产权合同案件审判

29. *A Licensing Contract Survives the Licensing of Unregistered Trademarks*

29. 尚未获得注册的商标的许可使用合同是否有效

In *Beijing Yehongda Trading Co. v. Tianjin Dev. Zone Taisheng Trading Co.*,²⁵ the Supreme People’s Court held that no laws or regulations forbid licensing of unregistered trademarks. Accordingly, where the parties to the licensing contract did not address the registration of the trademarks, there is no legal basis to support a claim that the licensing of unregistered trademarks constitutes fraud and invalidates the licensing contract.

在再审申请人泰盛公司与被申请人业宏达公司等商标许可使用合同纠纷案【（2012）民申字第1501号】中，最高人民法院认为，法律法规对许可他人使用尚未获得注册的商标未作禁止性规定，商标许可合同当事人对商标应该获得注册亦未有特别约定，一方以许可使用的商标未获得注册构成欺诈为由主张许可合同无效的，不予支持。

30. *The Technology Assignor’s Continued Obligation to Ensure Authenticity*

30. 技术转让合同中出让方技术资料真实保证义务的延续性

In *Jiangsu Jumpcan Pharm. Grp. Co. v. Beijing Furuikangzheng Med. Tech. Research Inst.*,²⁶ a case involving a technology assignment contract dispute, the Supreme People’s Court held that, for assigning any technology under the category of clinical trial medicine, the assignor assumes both the contractual and legal

在再审申请人福瑞研究所与被申请人济川公司技术转让合同纠纷案【（2013）民申字第718号】中，最高人民法院认为，药品临床批件申请项下的技术发生转让的，技术出让方在后续的药品申报生产阶段仍负有保证申报资料数据真实可靠的约定义务和法定

obligations in ensuring the authenticity and reliability of the declared information during the subsequent drug approval and production phases.

义务。

VII. LIABILITY OF INTELLECTUAL PROPERTY INFRINGEMENTS

六、知识产权侵权责任承担

31. *Determining Specific Manners to Cease Tortious Act*

31. 停止侵害民事责任具体承担方式的确定

In the aforementioned unfair competition case *Jilin Literature & History Press v. Chinese Press Co.*, the Supreme People's Court further noted that in determining specific manners to cease tortious acts, courts shall consider (1) the rule of proportionality, (2) the specific characteristics of the alleged tortious act, and (3) the purposefulness, necessity, and fairness of the remedy.

在前述《男人来自火星·女人来自金星》图书不正当竞争案中，最高人民法院还认为，停止侵害民事责任的具体方式的确定，应该遵循比例原则，结合被诉行为的特点，考虑具体责任方式的合目的性、必要性和均衡性。

32. *Civil Liability Arising from a Conflict Between a Business Name and a Registered Trademark*

32. 企业字号与注册商标冲突时的民事责任

In *Beijing Dabao Cosmetics Co. Ltd. v. Dabao Daily Chemical Products Factory*,²⁷ which involved the alleged infringement of a trademark, the Supreme People's Court held that cases arising from conflicts between business names and registered trademarks shall be decided on a case-by-case basis. If the use of a business name infringes upon a registered trademark, the Court may direct the business to modify its infringing business name. If, however, the use of the business name is in good faith and based on special historical considerations, a modification of the business name may not

在再审申请人大宝化妆品公司与被申请人大宝日化厂等侵害注册商标专用权和不正当竞争纠纷案【(2012)民提字第166号】中，最高人民法院认为，企业字号与注册商标冲突时应根据案件的具体情况予以处理：因突出使用企业名称侵犯注册商标专用权的，可以判令规范使用企业名称；该企业名称因特殊的历史关系已经长期善意使用的，可以不判令变更企业名称。

be necessary.

33. *Courts May Use Prior Agreements
Between a Patentee and an Infringer In
Determining Damages*

In *Lerado (Zhongshan) Industrial Co., Ltd. v. Hubei Tongba Children's Appliances Co., Ltd.*,²⁸ which involved the alleged infringement of a utility model patent, the Supreme People's Court held that if the infringer and the patentee previously reached an agreement on damages for any infringements, and the infringer subsequently infringes, the court may adopt the provisions of the agreement in determining damages.

VII. INTELLECTUAL PROPERTY LITIGATION
PROCEDURE AND EVIDENCE

34. *"The Place of the Infringement's
Outcome" Shall Be Understood as the
Place Where the Direct Results of the
Infringing Activities Take Place*

In *Zhengzhou Runda Electric-Powered Cleaning Co. v. Hubei Jieda Environmental Engineering Co. Ltd.*,²⁹ which involved a jurisdictional dispute in an alleged trade secret infringement case, the Supreme People's Court provided that the "place of the infringement's outcome" shall be understood as the place where the direct result of the infringing activities took place. It is not necessarily the plaintiff's place of domicile where the plaintiff suffered injury from the infringement.

33. 专利权人与侵权人的事先约定可以作为确定专利侵权损害赔偿数额的依据

在再审申请人隆成公司与被申请人童霸公司侵害实用新型专利权纠纷案【(2013)民提字第116号】中,最高人民法院认为,侵权人与权利人就再次侵权的赔偿数额作出约定后再次侵权的,人民法院可直接适用该约定确定侵权损害赔偿数额。

七、关于知识产权诉讼程序与证据

34. 侵权结果地应当理解为侵权行为直接产生的结果的发生地

在再审申请人郑州润达公司、陈庭荣与被申请人湖北洁达公司等侵害商业秘密纠纷管辖权异议案【(2013)民提字第16号】中,最高人民法院指出,侵权结果地应当理解为侵权行为直接产生的结果的发生地,不能简单地以原告受到损害就认定原告住所地是侵权结果发生地。

35. Claims, Which Were Closely Related but Developed Against it, Can Be Adjudicated as Counter-Claims

In *Gree (Jiangxi) Trading Co. v. Midea (Jiangxi) Refrigerating Appliances Sales Co.*,³⁰ which involves unfair competition, the Supreme People's Court held that it is not necessary for counter-claims to be based on the same facts and legal relationships among parties. Based on the overlapping causes of action, if a second claim is closely related to a first claim, but obviously developed against it adversely, it can be adjudicated as a counter-claim.

36. Key Evidence Submitted Late Due to a Change of Litigation Focus Should Be Regarded as New Evidence

In *Astellas Pharma Inc. v. Chengdu List Pharmaceutical Co. Ltd.*,³¹ which involved the alleged patent infringement of a process used to manufacture Tetrahydrobenzimidazole derivatives, the Supreme People's Court held that if a party submits additional key evidence after the deadline to submit evidence due to a change of focus of the ongoing litigation, and if the omission of such evidence may lead to obvious injustice, then courts shall accept the evidence as new evidence.

37. The Validity of a Court's Power to Collect Necessary Evidence

In the aforementioned case *Astellas Pharma Inc. v. Chengdu List Pharmaceutical Co. Ltd.*, the Supreme People's Court held that the Civil Procedure of China authorizes the

35. 与本诉具有牵连关系的对抗性诉讼可以作为反诉受理

在再审申请人江西格力公司与被申请人江西美的公司等不正当竞争纠纷案【(2013)民申字第2270号】中，最高人民法院认为，与本诉在具体事实和法律关系方面具有同一性并非反诉的必要条件；基于产生原因上的联系而提起的具有明显针对性、对抗性和关联性的诉讼，因其与本诉具有牵连关系，可以作为反诉处理。

36. 因诉争焦点变化而未能及时提交的证据属于“新的证据”

在再审申请人安斯泰来制药株式会社与被申请人力思特公司等侵害发明专利权纠纷案【(2013)民申字第261号】（以下简称“四氢苯并咪唑衍生物的制备方法”发明专利侵权案）中，最高人民法院认为，举证期限届满后，因诉争焦点发生变化，当事人为支持其主张而补充提交关键性证据，不审理该证据可能导致裁判明显不公的，应认定该证据属于“新的证据”。

37. 人民法院依职权调查收集必要证据的正当性

在前述“四氢苯并咪唑衍生物的制备方法”发明专利侵权案中，最高人民法院认为，人民法院为了审查核实当事人提供证据的真

courts' power to collect necessary evidence to investigate and verify the authenticity of submitted evidence. Thus, a court's collection of necessary evidence does not violate civil procedure.

38. Admissibility of a Conclusion Certified by a Foreign Agency

In *Tsuburaya Production Co., Ltd. v. Sompote Saengduenchai*,³² a copyright infringement case, the Supreme People's Court held that a certified conclusion may only be admitted as a basis for fact determination through judicial examination. Undisputed certified conclusions resulting from lawful certifying procedures are generally admissible as a basis for fact determination. For conclusions certified by a foreign agency, if a party disputes the admissibility of the foreign agency's conclusion, then an examination shall be conducted pursuant to applicable Chinese laws.

39. Fact Determination in the Infringement of a Patented Process to Manufacture Pre-existing Products

In *Weifang Hengliao Jiangzhi Co., Ltd. v. Yibin Changyi Jiangbo Co. Ltd.*,³³ a patent infringement case, the Supreme People's Court held that if (1) the patentee can prove that the alleged infringer manufactured identical products, (2) the patentee cannot prove that the alleged infringer used the patented process but can establish that it is highly likely that such products were manufactured through the use of the patented process based on the facts, and (3) the alleged infringer refuses to cooperate

实性而收集必要的证据,属于行使民事诉讼法赋予的职权,不违反法定程序。

38. 外国鉴定机构出具的鉴定结论能否采信

在再审申请人圆谷制作株式会社、上海圆谷公司与被申请人辛波特·桑登猜等侵害著作权纠纷案【(2011)民申字第259号】中,最高人民法院认为,鉴定结论只有经过审查判断才能作为认定事实的依据;对于鉴定程序合法,当事人没有异议的鉴定结论,一般可以作为法院认定相关案件事实的依据;对于外国鉴定机构出具的鉴定结论,在当事人提出质疑时能否采信,应当按照中国的相关法律进行审查。

39. 非新产品制造方法专利侵权纠纷中的事实推定

在再审申请人潍坊恒联公司与被申请人宜宾长毅公司等侵害发明专利权纠纷案【(2013)民申字第309号】中,最高人民法院认为,在专利权人能够证明被诉侵权人制造了同样产品,经合理努力仍无法证明被诉侵权人确实使用了该专利方法的情况下,根据案件具体情况,结合已知事实及日常生活经验,能够认定该同样产品经由专利方法制造的可能性很大,被诉侵权人拒不配合法院

with the investigation, collection, or conservation of evidence by the court, then the court may infer from common sense and the particular circumstances that the alleged infringement of the patented process did occur.

调查收集证据或者保全证据的，可以推定被诉侵权人使用了该专利方法。

[†] Translators are listed in alphabetical order: Tong Li, Juris expected 2016, University of Washington School of Law; Xiaohan Lou, Juris Doctor expected 2016, University of Washington School of Law; Zhenan Wang, Juris Doctor expected 2016, University of Washington School of Law; Zhenan Wang, Juris Doctor expected 2016, University of Washington School of Law; Qiuwen Xu, Juris Doctor expected 2015, University of Washington School of Law. The Translators would like to thank Sook Kim and the editorial staff for their support.

¹ The abstract and introduction was written by Sook Kim, Executive Translation Editor of the Washington International Law Journal, Juris Doctor expected 2015, University of Washington School of Law.

² Xinghe Gongsu yu Runde Gongsu Qinhan Zhuanli Quan Jiufen An (星河公司与润德公司侵害发明专利权纠纷案) [Harbin Indus. Univ. Xinghe Indus. Co. v. Jiang Su Runde Pipe Indus. Co.], Civil Application for Retrial No. 790 (Sup. People's Ct. 2013). As the owner of a patent entitled "One Kind of Steel Reinforced Plastic Sewer Pipe and Its Manufacturing Method and Apparatus," plaintiff Harbin Industrial University Xinghe Industrial Co., Ltd. ("Xinghe") brought a patent infringement claim against defendant Jiang Su Runde Pipe Industry Co., Ltd. ("Runde"). The patent included several independent claims, titled respectively: §1 A kind of steel reinforced plastic sewer pipe; §2 A method used to manufacture the pipe described in §1; and §6 An apparatus used to carry out the Method described in §2. The sewer pipes produced by Runde were made in the same method and apparatus as described in §2 and §6, but the pipes didn't share two technical features that were recorded in the first independent claim (§1). The latter two independent claims (§2 and §6) both cited the first independent claim. The Supreme People's Court concluded that, in this case, titles of §2 and §6 should be taken into consideration when determining the scope of the claim; because titles of §2 and §6 cited §1, the contents of those two technical features recorded in §1 should have a substantial effect on the latter two independent claims and thus have actual limitation effect on defining the scope of protection of the patent. For this reason, the pipes made by Runde, as well as the method and apparatus Runde used to manufacture the pipes, fell out of the protection of Xinghe's patent.

³ Xinyu Gongsu yu Houwang Gongsu Qinhan Zhuanli Quan Jiufen An (鑫宇公司与猴王公司侵害发明专利权纠纷案) [Hebei Xinyu Welding Co. v. Yichang Monkey King Welding Wire Co.], Civil Application for Retrial No. 1201 (Sup. People's Ct. 2013). As the exclusive-licensed holder of a patent entitled, "High-strength Structural Steel Gas-shielded Welding Wire," plaintiff Hebei Xinyu Welding Co., Ltd. ("Xinyu") brought a patent infringement claim against defendant Yichang Monkey King Welding Wire Co., Ltd. ("Monkey King"). In its patent claim one, it specified that this product "is composed of" a variety of named elements with different percentages. The Supreme People's Court concluded that it was a closed claim. The alleged infringing product produced by Monkey King, besides all the elements listed in Xinyu's patent claim one, also contained 0.049% Ni, one element which was explicitly excluded in Xinyu's patent claim one. Consequently, the allegedly infringing product fell out of the protection of Xinyu's patent.

⁴ Jieruite Zhongxin yu Jinzi Tianhe Gongsigongsi deng Qinhan Shiyong Xinxing Zhuanli Quan Jiufen An (捷瑞特中心与金自天和公司等侵害实用新型专利权纠纷案) [Beijing Jerrat Spring Damper Tech. Research Ctr. v. Beijing JZTH Buffer Tech. Co.], CIVIL APPLICATION FOR RETRIAL NO. 1146 (Sup. People's Ct. 2013). As the owner of a patent entitled "Fast-in-and-slow-out Type Elastic Buffer Damper," plaintiff Beijing Jerrat Spring Damper Technology Research Center brought a patent infringement claim against defendant Beijing JZTH Buffer Technology Co., Ltd. The alleged infringing product used the opposite unidirectional current limiting device installation and achieved the slow-in-and-fast-out result.

⁵ Lexue'er Gongsigongsi yu Chen Shundi deng Qinhan Zhuanli Quan Jiufen An (乐雪儿公司与陈顺弟等侵害专利权纠纷案) [Zhejiang Lesheros Household Articles Co. v. Chen Shundi], CIVIL RETRIAL NO. 225 (Sup. People's Ct. 2013). As the owner of a patent entitled "Processing Method of Fabric Plastic Bag Holder," plaintiff Chen Shundi brought a patent infringement claim against defendant Zhejiang Lesheros Household Articles Co., Ltd. The patent claim specified twelve steps in its processing method. The alleged infringing method skipped three of the twelve steps, and the step order was also different. The Higher People's Court decided that the alleged infringement falls within the scope of patent protection. The Supreme People's Court overturned, ruling that one certain step swap with the alleged infringing method improved the process efficiency, and such a change of the step order brought substantive differences on the technical effects.

⁶ Weiduoli Gongsigongsi yu Yueyuan Gongsigongsi deng Qinhan Waiguan Sheji Zhuanli Quan Jiufen An (维多利公司与越远公司等侵害外观设计专利权纠纷案) [Jinjiang Qingyang Weiduoli Food Co. v. Zhangzhou Yueyuan Food Co.], CIVIL APPLICATION FOR RETRIAL NO. 1658 (Sup. People's Ct. 2013). As the exclusive-licensed holder of a design patent entitled "Crafts (Pineapple Compote)," plaintiff Zhangzhou Yueyuan Food Co., Ltd. brought a design patent infringement claim against defendant Jinjiang Qingyang Weiduoli Food Co., Ltd. ("Weiduoli") for using a similar design in its jelly food package. The Supreme People's Court affirmed the Higher People's Court's decision, reasoning that the use of a similar design by Weiduoli constituted infringement because the alleged infringing product can be used as a decoration after the jelly is eaten, and thus the alleged infringing and infringed products belong to the same or a similar type.

⁷ "Mohe" Zhuanli Wuxiao Xingzheng An ("墨盒"专利无效行政案) [Seiko Epson Co. v. Patent Reexamination Bd. of SIPO], ADMINISTRATIVE REVIEW NO.53-1 (Sup. People's Ct. 2010). Defendant Seiko Epson Co., Ltd. is the applicant and owner of the patent "Cartridge" in this case. The defendant filed application documents in 1999 and acquired the patent in 2000. The original application documents and specifications contained terms of "semiconductor storage device" and "storage device" but has no reference to a "memory device." In subsequent years, the defendant has made multiple requests to have its claims under its "Cartridge" patent modified, including adding several patent claims related to a "memory device" and a "storage device." At one time, the defendant requested certain numbers of patent claims under "memory device" to be replaced by "storage device." In its opinion narrative, the defendant explained that "the 'memory device' in the patent claims shall refer to the circuit board and the semiconductor storage device that is on top of the circuit board." Regarding the defendant's ownership of the patent in this case, Foshan Kaideli Office Supplies Co., Ltd. and two other parties filed patent invalidation requests separately with the Patent Reexamination Board. The Chinese Patent Law requires a patent specification to make a clear and complete description of the invention, and modifying patent application documents shall not exceed the scope of the recorded original specification. The Supreme People's Court allowed the modification from "memory device" to "storage device," but sustained the invalidation decision of the Patent Reexamination Board, reasoning that the patent's specifications and examination files, rather than the patent owner's opinion narrative, shall be regarded as the decisive basis in examining whether a patent or patent application meets the above-mentioned requirements.

⁸ "Kangshengsu de Geiyao Fangfa" Faming Zhuanli Wuxiao Xingzheng An ("抗生素的给药方法"发明专利无效行政案) [Cubist Pharm., Inc. v. Patent Reexamination Bd. of SIPO], ADMINISTRATIVE APPLICATION FOR RETRIAL NO.75 (Sup. People's Ct. 2012). In 2004, defendant Cubist Pharmaceuticals Inc. acquired an invention patent of "Method of Administration of Antibiotics," which describes the

medical doses and intervals of daptomycin in treating bacterial infections. In 2008, plaintiff Xiao Hong filed a patent invalidation request with the Patent Reexamination Board together with evidences showing the effects, working theory, and alternative medication methods of daptomycin. The Supreme People's Court sustained the invalidation decision of the Patent Reexamination Board, reasoning that based on current Chinese Patent Law, if the nature of the invention manifests on the substance's medical use, the patent grant is valid only when the substance is used in the pharmaceutical process. The Supreme People's Court found no novelty regarding the substance's medical use in this case, because the mere act of changing the time interval in the dosing regimen has nothing to do with the pharmaceutical method.

⁹ Shiji Lianbao Gongsi yu Zhuanli Fushen Weiyuanhui deng Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (世纪联保公司与专利复审委员会等发明专利权无效行政纠纷案) [Beijing Century Lianbao Fire-Fighting New Technology Co. v. the Patent Re-Examination Committee], IP ADMINISTRATIVE RETRIAL NO. 20 (Sup. People's Ct. 2012). Century Lianbao Fire-Fighting New Technology Co., Ltd. was the patent owner of a patent entitled "Pulsed Superfine Powder Automatic Fire Extinguishing Device ('Fire Extinguishing Device')." The patent specification read:

1. The Pulsed Superfine Powder Automatic Fire Extinguishing Device contains a starter and a shell covering pulsed superfine extinguishing powder; its feature lies in that it contains: a shell, which includes an outer skin, pulsed superfine extinguishing powder stored under the outer skin, and aluminum coating which seals the shell nozzle; a starter with a conduction velocity faster than 0.5 m/s, which includes a starter subassembly consists of a thermosensitive wire which has an ignition point equals to or is above 135 Celsius degree and is sensitive to flames and temperature and a drivepipe coating the thermosensitive wire, and an aerogenesis subassembly consists of an aluminum plate pressed in the inner sider of shell by screws and the perforated bolt penetrated with the thermosensitive wire, aerogenesis substances contacting the thermosensitive wire, and a non-metal film pressed to the aluminum plate to wrap the aerogenesis substances.

Shanxi Zhong Yuan Fire Fighting Equipment Co., Ltd. submitted this attachment as a reference, which is a fire extinguishing device including a Porous Part, and requested that the Patent Reexamination Board invalidate the patent. The Board declared the patent invalid, but did not recognize the lack of a Porous Part as a distinguish character. The Supreme People's Court affirmed the decision, on the basis that the distinction between open-ended and close-ended claims applies in machinery area; though the patent "Fire Extinguishing Device" did not mention a Porous Part, the lack of a mention of a part generally does not serve as a distinguishing character.

¹⁰ Aruisita Gongsi yu Zhuanli Fushen Weiyuanhui Faming Zhuanli Quan Xingzheng Jiufen An (阿瑞斯塔公司与被申请人专利复审委员会发明专利权行政纠纷)[Arai Star Biology Science North America Co. v. The Patent Re-Examination Committee], ADMINISTRATIVE-REVIEW NO. 31 (Sup. People's Ct. 2013). The Arai Star Biology Science North America Co., Ltd. was the applicant of the patent "Selective Herbicide Based On Substituted Phenyl Sulfanyl Amino Carbonyl Triazolinones," which applies Formula 1 Compound solely to a restricted scope of herbs. The PRC State Intellectual Property Office denied the application based on lack of novelty and inventiveness, as compared to Reference 1 (US5534486A) and Reference 2 (WO98/12923A1). The Supreme People's Court noted that Reference 2 demonstrated that the sole application of Formula 1 Compound to a certain kind of herb is not as effective as a mixed application of Formula 1 Compound and other ingredients like herbicide; it shows that the sole application of Formula 1 Compound exists in existing technology, and there is no technical basis to exclude the sole application of Formula 1 compound to certain herbs.

¹¹ Zhushi Huishe Daoye yu Zhuanli Fushen Weiyuanhui deng Faming Zhuanli Quan Wuxiao Xingzheng Jiufen An (株式会社岛野与专利复审委员会等发明专利权无效行政纠纷案) [Shimano Co. v. The Patent Re-Examination Committee], IP ADMINISTRATIVE RETRIAL NO. 21 (Sup. People's Ct. 2013). Shimano Co., Ltd. was the owner of the patent entitled "Rear Shifter"; this case derives from the authorization of a divisional application of the original application "Rear Shifter." The divisional patent

claim modified the phrases “round screw hole,” “round-shaped screw hole” and “screw hole” in the original application into “round hole,” and modified “mould pressing” to “pressing.” Ningbo Saiguan Bicycle Co., Ltd. requested the patent invalid, claiming that modification exceeded “the scope written in original Specification and Claim.” The Supreme People’s Court held that changing from “round screw hole,” “round-shaped screw hole” or “screw hole” to “round hole,” and changing from “mould pressing” to “pressing” would make persons having ordinary skills in this field get information that is different from the original Specification and Claim, therefore exceeded the scope. But since the modification concerned with non-invention part, relevant departments should seek actively for possible remedies to save the value of deserving inventions.

¹² See *supra* endnote 7.

¹³ *Id.*

¹⁴ Qinzhouhuang Gongsi yu Tanshanhuang Fazhan Gongsi deng Qin Hai Shangbiao Quan Jiufen An (沁州黄公司与檀山皇发展公司等侵害商标权纠纷案) [Shanxi Qinzhouhuang Millet (Group) Co. v. Tanshanhuang Development Co.], CIVIL APPLICATION FOR RETRIAL NO. 1642 (Sup. People’s Ct. 2013). Shanxi Qinzhouhuang Millet (Group) Co., Ltd. (“Qinzhouhuang”) has the right of exclusive use of the trademark “Qinzhou,” which was recognized as Well-Known Trademark of the City of Changzhi, and Famous Trademark and Reputed Trademark of the Province of Shanxi. Tanshanhuang Development Co., Ltd. (“Tanshanhuang”) used “Qinzhouhuang” on its millet products—but as the name of the millet, not as a trademark. Qinzhouhuang complained that Tanshanhuang infringed its trademark rights. The Supreme People’s Court noted that “Qinzhouhuang” is the name of a breed, which refers to millet produced in a certain region through certain technical procedures, and therefore reflects the difference between the specific breed and other breeds. Thus, it was a generic term even before the registration of the trademark “Qinzhou.”

¹⁵ Xin Dongyang Qiye Gongsi yu Xin Dongyang Gufen Gongsi Shangbiao Yiyi Fushen Xingzheng Jiufen An (新东阳企业公司与新东阳股份公司商标异议复审行政纠纷案) [Hsin Tung Yang Enterprise Inc. v. Hsin Tung Yang Co.], ADMINISTRATIVE-REVIEW NO. 31 (Sup. People’s Ct. 2013). Hsin Tung Yang Enterprise Inc. (“Enterprise”) was the applicant for the registration of the trademark “Hsin Tung Yang Jitu.” Hsin Tung Yang Co., Ltd. (“Corporation”) raised an objection to the application but was denied the objection. Corporation therefore filed the complaint to the court. The Supreme People’s Court noted that Shilai Mai used to be the vice president of the Board of Directors of Corporation, used to be responsible for Shanghai Hsin Tung Yang Food Co., Ltd., which was invested by Corporation, and was still serving as one of the directors and was a representative of Corporation at the time of the lawsuit. It also noted that both parties agreed that “Shilai Mai was appointed by the Board of Corporation as the exclusive representative in charge of all business in China mainland”; therefore Shilai Mai was a representative of Corporation and could not register “Hsin Tung Yang” under his own name in mainland China without permission from Corporation. Furthermore, Shilai Mai registered under the name of Enterprise, of which he was the statutory representative, therefore Enterprise could be regarded as a representative or statutory agent of Corporation under Rule 15 of the PRC Trademark Law.

¹⁶ Fushun Boge Gongsi yu Shangbiao Pingshen Weiyuanhui, Yingkou Boxian Gongsi Shangbiao Zhengyi Xingzheng Jiufen An (抚顺博格公司与商标评审委员会、营口玻纤公司商标争议行政纠纷案) [Fushun Boge Environmental Protection Technology Co. v. Trademark Appeal Bd., Yingkou Fiberglass Co.], IP ADMINISTRATIVE RETRIAL NO. 11 (Sup. People’s Ct. 2013). Fushun Industrial Fabric Factory (“Factory”) was the owner of the trademark “Fumeisi FMS,” which was later transferred to Fushun Boge Environmental Protection Technology Co., Ltd.. Yingkou Fiberglass Co., Ltd. (“Fiberglass”) requested revocation. Fiberglass was the main developer and nominator of FMS products, and was therefore awarded a National New Product Certificate and National “Torch Plan” Project Certificate, among other certificates. But Factory and Fiberglass both started using the trademark “Fumeisi FMS” at almost the same time, and both knew that the other corporation was using the same trademark. Additionally, Factory sold the product on a larger scale than Fiberglass. The Supreme Court held that the trademark should not be annulled

because there was no evidence that Factory had a bad intent in applying for the registration of the trademark “Fumeisi FMS.”

¹⁷ Yu Xiaohua yu Shangbiao Pingshen Weiyuan Hui deng Shangbiao Zhengyi Xingzheng Jiufen An (余晓华与商标评审委员会等商标争议行政纠纷案) [Yu Xiaohua v. Trademark Review & Adjudication Bd.], ADMINISTRATIVE REVIEW NO. 80 (Sup. People’s Ct. 2013). Defendant Chengdu Tongdefu Peach Slice Co., Ltd. had the disputed trademark “TONGDEFU and the image” registered on October 14, 1998. On April 24, 2003, plaintiff Yu Xiaohua brought a claim against the defendant requesting that the disputed trademark be deregistered. After the Trademark Review and Adjudication Board decided to maintain the registration of the disputed trademark because the facts showed that the plaintiff had ceased using “TONGDEFU and the image” forty years prior, the plaintiff brought an administrative case against the defendant in front of the No. 1 Intermediary People’s Court of Beijing. The court affirmed the decision of the Trademark Review and Adjudication Board, and the Higher People’s Court of Beijing dismissed the appeal. The plaintiff appealed to the Supreme People’s Court, which again dismissed the appeal. The Court ruled that under Article 31 of the Trademark Law, the term “a trademark that was previously used by others and has certain influences” refers to an unregistered trademark that has been used for a certain amount of time and enjoys a reputation within a certain public group due to a certain amount of sales volume and commercial advertisement. Therefore, the term can be distinguished from the source of the commodity.

¹⁸ Li Longfeng yu Shangbiao Pingshen Weiyuan Hui deng Shangbiao Zhengyi Xingzheng Jiufen An (李隆丰与商标评审委员会等商标争议行政纠纷案) [Li Longfeng v. Trademark Review & Adjudication Bd.], ADMINISTRATIVE REVIEW NO. 41-42 (Sup. People’s Ct. 2013). Plaintiff Li Longfeng had two disputed trademarks registered under the name of “Haitang Bay.” Later, Defendant Sanya Haitang Bay Administrative Committee requested that the Trademark Review and Adjudication Board revoke the registration of the trademarks. After the Trademark Review and Adjudication Board granted Sanya Haitang Bay Administrative Committee such request, the plaintiff brought an administrative case in front of the No. 1 Intermediary Court of Beijing, which made a ruling to reverse the decision made by the Trademark Review and Adjudication Board. Following that, the defendant appealed to the Higher People’s Court of Beijing, which reversed the lower court’s ruling, and the plaintiff appealed to the Supreme People’s Court. The Supreme People’s Court reversed again, deciding that where Li Longfeng took advantage of the local government’s efforts in promoting Haitang Bay Resorts and other developing projects that had brought popularity to the name of “Haitang Bay”, his subsequent act of registering multiple “Haitang Bay” trademarks without good reason does not show actual intent to use. Thus, he indeed misappropriated public resources and disturbed the order of trademark registration.

¹⁹ Boneiteli Saiwenaole Youxian Gongsì yu Shangbiao Pingshen Weiyuan Hui deng Shangbiao Zhengyi Xingzheng Jiufen An (博内特里塞文奥勒有限公司与商标评审委员会等商标争议行政纠纷案) [Bonneterie Cevenole S.A.R.L. v. Trademark Review & Adjudication Bd.], Administrative Retrial No. 28 (Sup. People’s Ct. 2012). Plaintiff Bonneterie Cevenole S.A.R.L. had its “flower image” trademark (“disputed trademark”) registered under category twenty-five in 2003. Defendant Foshan Mingshi Industrial Co., Ltd. had its “flower image” trademark (“cited trademark”) registered under category twenty-six in 2001. In 2005, the latter requested the Trademark Review and Adjudication Board revoke Bonneterie Cevenole S.A.R.L.’s registration of the disputed trademark. After the Trademark Review and Adjudication Board granted Foshan Mingshi Industrial Co., Ltd.’s request, the plaintiff brought an administrative case in front of the No. 1 Intermediary Court of Beijing, which made a ruling to affirm the decision made by the Trademark Review and Adjudication Board. The plaintiff appealed to the Higher People’s Court of Beijing, which affirmed the lower court’s ruling. The plaintiff then appealed to the Supreme People’s Court. The Supreme People’s Court reversed the previous rulings, deciding that where the defendant’s cited trademark was not well-known before the date of application of registration, the disputed trademark became a famous one quickly because of plaintiff’s decades of business reputation. To allow the two trademarks to exist would not harm the public’s ability to distinguish the two trademarks under different categories. Further, the Court ruled that defendant’s cited trademark enjoys exclusive right of use, but because of its lack of reputation, the trademark had a limited right to exclude.

²⁰ Legao Gongsi yu Guangdong Xiao Bailong Dongman Wanju Shiye Youxian Gongsi deng Qin Hai Zhuzuo Quan Jiufen An (高公司与广小白漫玩具有限公司侵害著作权案) [Lego Grp. v. Guangdong Loongon Animation & Toys Indus. Co.], Civil Application for Retrial No. 1262-71, 1275-82, 1327-46, 1348-65 (Sup. People's Ct. 2013). Plaintiff Lego Group brought suit against defendants Guangdong Loongon Animation & Toys Industry Co., Ltd. and Beijing Huayuan Xidan Shopping Center Co., Ltd. for producing and selling toys which infringed the plaintiff's copyright. The No.1 Intermediary Court of Beijing decided in the first instance that the toys in question did not possess originality and thus could not be regarded as artworks. The plaintiff appealed the ruling to the Supreme People's Court, which again dismissed the case. According to the Supreme People's Court, the plaintiff designed the toys in question independently with a certain amount of labor and capital. However, independent accomplishment and labor are not sufficient conditions to give an object the protection of the Copyright Law. In this case, because the toys do not possess aesthetic uniqueness, they did not have the required originality under the Copyright Law. Further, the status of registration of the toys in question cannot itself constitute the base for protection of the Copyright Law.

²¹ Jingde Zhen Falan Ci Shiye Youxian Gongsi yu Chaozhou Shi Jialande Taoci Youxian Gongsi Qin Hai Zhuzuo Quan Jiufen An (景德镇法瓷有限公司与潮州市加德陶瓷有限公司侵害著作权案) [Jingde Zhen Franz Indus. Co. v. Chaozhou Jialande Porcelain Co.], Civil Application for Retrial No. 1392 (Sup. People's Ct. 2012). Plaintiff Jingde Zhen Franz Industry Co., Ltd. acquired from the copyright owner, Haichang Industry Co., Ltd., the exclusive right of use on a series of porcelain products under the names of "Hummer," "Cranberry," "Hummer Display," among others. Defendant Chaozhou Jialande Porcelain Co., Ltd. produced porcelain products under the names of "Solanum," "Gold Fish," and "Iris." Claiming that the defendant's design of porcelain products was an intentional imitation of the plaintiff's porcelain products, the plaintiff brought a copyright infringement case against the defendant. The local courts ruled that only the "Solanum" series products and certain products in the "Iris" series constituted copyright infringement of the plaintiff's products. The plaintiff then appealed to the Supreme People's Court, which dismissed the plaintiff's appeal request. According to the Supreme People's Court, imitation is the basic means of promoting progress in literature, arts, science, social science, and engineering. The Copyright Law does not forbid moderate imitation as long as no original expression is plagiarized. In this case, certain products in the "Iris" series and all in the "Gold Fish" series are similar to Haichang Industry Co., Ltd.'s designed products. However, the difference is also conspicuous, thus the defendant's act is within the allowed ambit of legal imitation.

²² Guilin Nanyao Gufen Youxian Gongsi yu Sanmen Xia Sainuowei Zhiyao Youxian Gongsi Qin Hai Waiguan Sheji Zhuanli Quan he Shanzi Shiyong Zhiming Shangpin Teyou Baozhuang, Zhuanghuang Jiufen An (桂林南药股份有限公司与三门峡赛诺维制药有限公司侵害外观设计专利权和擅自使用知名商品特有包装、装潢纠纷案) [Guilin Pharm. Co. v. Sanmen Xia Sinoway Pharm. Co.], Civil Retrial No. 163 (Sup. People's Ct. 2013). In October 1963, Guilin Pharmaceutical Company received official permission to produce lactasin tablets. From 1979 to 2000, relevant governmental agencies granted the lactasin tablets produced by Guilin Pharmaceutical Company the names "Famous Products" and "Quality Products" for several times. In June 2011, Guilin Pharmaceutical Co., Ltd., plaintiff in this case, was founded. Later that year, Guilin Pharmaceutical Company's seventy-two kinds of medicines, including the said lactasin tablets, changed their "name of producer" to the plaintiff. In 2002 and 2006, the plaintiff applied twice for packaging design of its lactasin tablets, and both versions were approved with the second roughly the same as the first except for minor differences. In December 2010, Guilin Pharmaceutical Company (the entity changed its name at the time of the merger) merged into the plaintiff. In March 2005, defendant Sanmen Xia Sinoway Pharmaceutical Co., Ltd. established Sanmen Xia Huayi Pharmaceutical Co., Ltd. and later merged with it. From 2008, defendant (and Sanmen Xia Huayi Pharmaceutical Co., Ltd.) applied for packaging design and used approximately the same label for its own lactasin tablets. The plaintiff brought suit against the defendant claiming that the defendant's act constituted unfair competition. When the lower courts ruled for the defendant because of severance of product reputation due to change of producer and merger, plaintiff appealed to the Supreme People's Court, which dismissed the lower courts'

rulings and decided that the defendant should stop its unfair competition by using the packaging design and make economic compensation of 213,200 RMB to the plaintiff. According to the Supreme People's Court, because the plaintiff and Guilin Pharmaceutical Company had a very special relationship of inheritability, both produce the same lactasin tablets, and both use substantially the same packaging design, the plaintiff is entitled to inherit the unique packaging and decoration of the famous products owned by Guilin Pharmaceutical Company.

²³ Jilin Wenshi Chuban She yu Huawen Chuban She Youxian Gongsì deng Qinhai Zhuzuoquan jì Bu Zhengdang Jingzheng Jiufen An (吉林文史出版社与华文出版社有限公司等侵害著作权及不正当竞争纠纷案) [Jilin Literature & History Press v. Chinese Press Co.], Civil Application for Retrial No. 371 (Sup. People's Ct. 2013). Plaintiff Jilin Literature and History Press received the exclusive authority to publish "Men Are from Mars, Women Are From Venus" by Dr. John Grey. The plaintiff had a certain cover design for the book and had maintained good sales records on Chinese market from 2007 to 2011. In January 2011, defendant Chinese Press Co., Ltd. published "Collected Edition of Man Are from Mars, Women Are from Venus" by Zhuo Wenming. Because the defendant's book has very similar cover design as the plaintiff's book, the plaintiff sued the defendant for copyright infringement and unfair competition. The local courts ruled that the defendant's use of a similar name and decoration of a famous product constituted unfair competition and that it should compensate the plaintiff for the loss of profit. The defendant appealed to the Supreme People's Court, which dismissed its appeal request. According to the Supreme People's Court, to the relevant public, if a product's name, packaging, or decoration is objectively able to distinguish the product from other sources of products, it then has the uniqueness that is required in Article V, Paragraph II of the Law Against Unfair Competition. In this case, the plaintiff's book had enjoyed a good reputation, and its decoration design was fairly distinguishable. Thus the uniqueness of decoration of famous product was established.

²⁴ Wang Zhe'an yu Weisheng Bu Guoji Jiaoliu yu Hezuo Zhongxin deng Qinhai Shangye Mimi Jiufen An (王者安与卫生部国际交流与合作中心等侵害商业秘密纠纷案) [Wang Zhe'an v. Int'l Exch. & Cooperation Ctr.], Civil Application for Retrial No. 1238 (Sup. People's Ct. 2013). Plaintiff Wang Zhe'an was an employee of the International Exchange and Cooperation Center under the National Health and Family Planning Commission, one of the defendants in this case. Starting May 2000, the plaintiff participated in and accomplished the "Measures for Distribution System Reform of the International Exchange and Cooperation Center (hereinafter called "Reform Measures")." Later, the plaintiff filed a suit against the International Exchange and Cooperation Center, its former director Li Hongshan, and Yuan Jinlin, claiming that Li Hongshan defrauded the plaintiff of the Reform Measures, the trade secret, and provided it to Yuan Jinlin, who then used the Reform Measures in competing with the plaintiff for the position of General HR Chief. The lower courts dismissed the plaintiff's claims, reasoning that the evidence was insufficient to show that the plaintiff accomplished the Reform Measures independently. The plaintiff appealed to the Supreme People's Court, which again dismissed the plaintiff's request. According to the Supreme People's Court, the Law Against Unfair Competition is meant to regulate market entities that take part in market dealings and to regulate market activities that are conducted by such market entities. In this case, the plaintiff does not deal with commodities trading or for-profit services, and he has not established any relationship of market competition with the three defendants. Therefore, the claimed act is not any type of "market competition" regulated by the Law Against Unfair Competition.

²⁵ Beijing Yehongda Jingmao Youxian Gongsì yu Tianjin Kaifa Qu Taisheng Maoyi Youxian Gongsì deng Shangbiao Xuke Shiyong Hetong Jiufen An (北京业宏达经贸有限公司与天津开发区泰盛贸易有限公司等商标许可使用合同纠纷案) [Beijing Yehongda Trading Co. v. Tianjin Dev. Zone Taisheng Trading Co.], Civil Application for Retrial No. 1501 (Sup. People's Ct. 2012). In March 2007, plaintiff Beijing Yehongda Trading Co., Ltd. acquired from a third party the exclusive right to use and sublicense rights of the trademark "wolsey and its image." In April 2007, the plaintiff later signed a "Sublicense Agreement" with defendant Tianjin Development Zone Taisheng Trading Co., Ltd., granting the later the exclusive right to use said trademark and others for the period of May 2007 to December 2013 in exchange for a fee and disclosure of financial records and reports. On the same day, the two signed a "Supplemental Agreement," in which the parties agreed that the legal representative of the defendant would

sign a new agreement with the plaintiff after he established a new company, Guangzhou Ruixiangchun Leather Accessories Co., Ltd., the other named defendant in the case. When the defendants found that the trademark in question failed to complete the registration and was accordingly sanctioned, they refused to pay for the fees and make disclosures as agreed in the prior agreements. The plaintiff filed suit. After the No. 2 Intermediary Court of Beijing ruled for the defendants, the Higher People's Court reversed and ruled the agreements in question valid. The defendants then appealed to the Supreme People's Court, which denied their appeal request. According to the Supreme People's Court, the agreements in question were expressions of mutual consent, and sublicensing a trademark in the process of registration is a legal act. Further, because the agreements did not stipulate that all trademarks shall be registered, but instead included a "no guarantee of validity" clause, the defendants, as the licensee, have the responsibility of checking the status of the trademarks. Lastly, because the defendants did not prove the essential business value of the trademark in question, the failure of registration did not affect the fundamental purpose of the agreements. In sum, the plaintiff's act was not fraudulent, but proper.

²⁶ Jichuan Yaoye Jituan Gufen Youxian Gongsi yu Beijing Furuikangzheng Yiyao Jishu Yanjiu Suo Jishu Zhuanrang Hetong Jiufen An (济川药业集团股份有限公司与北京福瑞康正医药技术研究所技术转让合同纠纷案) [Jiangsu Jumpcan Pharm. Grp. Co. v. Beijing Furuikangzheng Med. Tech. Research Inst.], Civil Application for Retrial No. 718 (Sup. People's Ct. 2013). In December 2003, plaintiff Jiangsu Jumpcan Pharmaceutical Group Co., Ltd. and defendant Beijing Furuikangzheng Medical Technology Research Institute signed a "New Medicine Technology Transfer Contract," agreeing to transfer the clinic documents of ropivacaine hydrochloride, including both the ingredients and injections. The parties also agreed that the defendant was responsible for the authenticity and reliability of all technologies and information provided and that the defendant should refund all transfer fees within days if the new medicine fails the declaration because of the defendant's technical problems. In August 2008, China Food and Drug Administration issued an opinion denying the registration request of ropivacaine hydrochloride and its injections for authenticity issues in the application materials that were initially submitted by the defendant. The plaintiff brought suit requesting termination of contract and reimbursement of all paid transfer fees and associated losses. After the lower courts granted the plaintiff such requests, the defendant appealed to the Supreme People's Court. The Supreme People's Court affirmed the lower courts' judgment, reasoning that Article 349 of the Contract Law prescribes that the transferor in a technology transfer contract should guarantee its legal ownership as well as the integrity, correctness, and validity of technology. Also, given what the parties had agreed upon in the contract, the defendant had the responsibility of guaranteeing the authenticity and reliability of all transferred technologies and information. Further, a medicine registration applicant should be held liable for its application materials under the Provisions for Drug Registration. For all of the above reasons, the Court found that the defendant should be liable for contract breach.

²⁷ Dabao Huazhuang Pin Gongsi yu Dabao Rihua Chang deng Qin Hai Zhuce Shangbiao Zhuanyong Quan he Bu Zhengdang Jingzheng Jiufen An (大宝化妆品公司与大宝日化厂等侵害注册商标专用权和不正当竞争纠纷案) [Beijing Dabao Cosmetics Co. v. Dabao Daily Chem. Prod. Factory], Civil Retrial No. 166 (Sup. People's Ct. 2012). Beijing Sanlu Factory ("Sanlu Factory"), a third party in this case, registered the trademark "Dabao" and founded Beijing Dabao Specialty Adhesives Plant ("Adhesives Plant"). Adhesives Plant started to use the "Dabao" trademark for its five-cleaning powder since 1991. Sanlu Factory later founded Beijing Dabao Cosmetics Co., Ltd. ("Dabao Cosmetics"), which received authorization from Adhesives Plant to use "Dabao" on its products. In 2004, Adhesives Plant went through shareholding reform and changed its name to Dabao Daily Chemical Products Factory ("Dabao Daily"), which continued using "Dabao" on its five-cleaning powder products. One month later, Sanlu Factory transferred all of its trademark ownership to "Dabao" and related characters and images to Dabao Cosmetics. In 2007, Dabao Daily entered into a business agreement with Shenzhen Biguiyuan Chemicals Co., Ltd. ("Biguiyuan") and jointly promoted their products under the name of "Dabao Rihua." In 2008, Sanlu Factory sold all its equity in Dabao Cosmetics to Johnson & Johnson (China) Investment Co., Ltd. (Johnson & Johnson) without including Dabao Daily in the process. Subsequently, Dabao Cosmetics brought a trademark infringement and unfair competition case against Dabao Daily and Biguiyuan. The Supreme People's Court ruled that Dabao Daily Chemical should stop using the "Dabao" trademark on its products but may retain "Dabao" in its business name because of its long use history and the absence of

evidence showing that it shall cease using the name at the time of Johnson & Johnson's acquisition of Dabao Cosmetics.

²⁸ Longcheng Gongsi yu Tongba Gongsi Qin Hai Shiyong Xinxing Zhuanli Quan Jiufen An (隆成公司与童霸公司侵害实用新型专利权纠纷案) [Lerado Indus. Co. v. Hubei Tongba Children's Appliances Co.], Civil Retrial No. 116 (Sup. People's Ct. 2013). As the owner of a utility model patent titled "Front-wheel Positioning Device," plaintiff Lerado Industrial Co., Ltd. ("Lerado") brought a patent infringement claim against Tongba Children's Appliances Co., Ltd. ("Tongba") in 2008. Later, the two parties reached a civil mediation agreement, which specified that Tongba would compensate Lerado one million RMB if another infringement occurred in the future. When Lerado found that Tongba continued infringing Lerado's patent, Lerado brought another patent infringement claim against Tongba. In the current lawsuit, Lerado clarified that the claim basis is the patent infringement rather than the breach of contract. The Intermediate People's Court and the Higher People's Court decided that the amount determined in the mediation agreement cannot be applied in this patent infringement suit. The Supreme People's Court overturned, holding that Tongba shall compensate one million RMB to Lerado as specified in the agreement.

²⁹ Zhengzhou Runda Gongsi, Chen Rongting, yu Hubei Jieda Gongsi deng Qin Hai Shangye Mimi Jiufen Guanxia Quan Yiyi An (郑州润达公司、陈庭荣与湖北洁达公司等侵害商业秘密纠纷管辖权异议案) [Zhengzhou Runda Elect. Powered Cleaning Co. v. Hubei Jieda Env'tl. Eng'g Co.], Civil Retrial No. 16 (Sup. People's Ct. 2013). Plaintiff Hubei Jieda Environmental Engineering Co., Ltd. brought a claim for the infringement of trade secrets against three named defendants in the Intermediate People's Court of Jingzhou, Hubei. The Intermediate People's Court and the Higher People's Court of Hubei reasoned that jurisdiction is permissible either in the courts of provinces where the defendants were domiciled or in the courts of provinces where the result of an infringement occurred. The two courts then decided that their jurisdiction was permissible, because Jinzhou city is where the plaintiff was located, and therefore is where the result of the alleged infringement occurred. The Supreme People's Court overturned, deciding that the place of the infringement result in this case was the same as the place where the defendants committed the infringement acts, which was not in Jinzhou city. For that reason, the Supreme People's Court ruled that the Intermediate People's Court of Jinzhou did not have the jurisdiction over this case.

³⁰ Jiangxi Geli Gongsi yu Jiangxi Meidi Gongsi deng Buzhengdang Jingzheng Jiufen An (江西格力公司与江西美的公司等不正当竞争纠纷案) [Jiangxi Shengshi Xinxing Gree Co. v. Jiangxi Midea Refrigeration Equipment Sales Co.], Civil Application for Retrial No. 2270 (Sup. People's Ct. 2013). Jiangxi Shengshi Xinxing Gree Co. Ltd. ("Gree") was responsible for the sales of Gree AC products in the Province of Jiangxi. The products were advertised as using 1-Hz Frequency Conversion Technology. Meanwhile, Jiangxi Midea Refrigeration Equipment Sales Co., Ltd. ("Midea") was responsible for the sales of Midea AC products in Jiangxi, and those products were advertised as using All DC Frequency Conversion Technology. Midea published ads in several newspapers that read "All DC is better than 1-Hz, why," and "1-Hz is out, stop fooling customers." Gree subsequently published ads in the same newspapers which read "All DC is out, stop using technology from 10 year ago." Gree then filed a lawsuit against Midea, claiming that Midea's newspaper ads constituted illicit competition. In response, Midea filed a counterclaim, charging that Gree's newspapers ads constituted illicit competition. The Supreme People's Court held that despite the fact that the two claims were based on different facts, they were closely related to and were developed against each other, so the two claims could be tried in one case as case in chief and a counterclaim, respectively.

³¹ Ansitailai Zhiyao Zhushi Huishe yu Lisite Gongsi deng Qin Hai Faming Zhuanli Quan Jiufen An (安斯泰来制药株式会社与力思特公司等侵害发明专利权纠纷案) [Astellas Pharma Inc. v. Chengdu List Pharmaceutical Co.], Civil Application for Retrial No. 261 (Sup. People's Ct. 2013). Astellas Pharma Inc. ("Astellas") was the owner of the patent entitled "Synthetic Method of Tetrahydrobenzene and Imidazole Derivatives ('Synthetic Method')." Astellas filed a lawsuit against Chengdu List Pharmaceutical Co., Ltd. and an individual, Hongbing Zhang. During the first trial, the parties' dispute focused on whether List had outsourced Remosetron raw material, and whether the method List used to convert Remosetron raw material

into Ramosetron hydrochloride was included in patent claim § 9. In the second trial, however, Astellas calculated the amount of Remosetron raw material that was needed, which was higher than the amount outsourced from a third party; Astellas thus argued that List may have Remosetron resources other than outsourcing. In response, List submitted copies of two invoices to the court afterwards, to prove that the amount it outsourced was higher than what Astellas had alleged. Besides the copies of invoices, on appeal, List submitted five original invoices and relevant vouchers as well as stock inspection reports. Astellas moved to exclude the evidence, on the basis that the evidence was under the control of List at all times and was not new evidence. The Supreme People's Court noted that the failure of List to submit the evidence was closely related to the change of disputes; furthermore, the evidence was key evidence, and therefore should be permitted to trial as "new evidence."

³² Xinbote Sangdengcai deng yu Yuangu Zhizuo Zhushi Huishe deng Qinhai Zhuzuo Quan Jiufen An (辛波特·桑登猜等与圆谷制作株式会社等侵害著作权纠纷案) [Saengduenchai v. Tsuburaya Prod. Co.], Civil Application for Retrial No. 259 (Sup. People's Ct. 2011). Plaintiffs Chaoyo Productions Co., Ltd. and its CEO Sompote Saengduenchai brought a copyright infringement case against defendants Tsuburaya Production Co., Ltd., Shanghai Tsuburaya Co., Ltd., Guangzhou Book Center Co., Ltd., and Shanghai Audio and Video Publishing House. Given the parties' history of litigation over disputes in Japan and Thailand, when examining the two key pieces of evidence, the "1976 Contract" and the "Apology Letter," the Intermediary Court of Guangzhou accepted the authentication conclusion certified by an expert panel from the General Administration of Police Evidence Examination Department of Thailand. The court ruled that the "1976 Contract" lacked authenticity and that the "Apology Letter" was authentic but insufficient to support the Authenticity of the "1976 Contract." The Higher People's Court of Guangzhou reversed, deciding that the judgment of the Thai courts was not binding, that the defendants shall cease the infringement, and reimburse the plaintiffs for loss. The defendants then appealed to the Supreme People's Court, which dismissed the appeal request. According to the Supreme People's Court, authentication conclusions certified by authentication agencies are a type of evidence. An authentication conclusion of high litigation value shall meet the standards of objectivity, relevancy, and legality. Instead of accepting as true, Chinese courts shall examine authentication conclusions certified by foreign authentication agencies according to applicable laws of China. In this case, the plaintiffs disputed the authentication conclusion on reasonable grounds, so the Higher People's Court was allowed to refuse to admit the conclusion into evidence.

³³ Yibin Changyi Jiangpo Youxian Zeren Gongsi yu Weifang Henglian Jiangzhi Youxian Gongsi Qinhai Faming Zhuanli Quan Jiufen An (宜宾长毅浆粕有限责任公司与潍坊恒联浆纸有限公司等侵害发明专利权纠纷案) [Yibin Changyi Jiangpo Co. v. Weifang Henglian Jiangzhi Co.], Civil Application for Retrial No. 309 (Sup. People's Ct. 2013). Plaintiff Yibin Changyi Jiangpo Co., Ltd. was the patent owner of the "Acetanier Denaturation Production Technique." Defendant Chengdu Xinruixin Plastics Co., Ltd. sold viscose acetanier products produced by co-defendant Weifang Henglian Jiangzhi Co., Ltd. The plaintiff sued the defendants for patent infringement. The Intermediary Court of Chengdu ruled against the defendants, reasoning that when the plaintiff was unable to acquire evidence of the production technique of the defendants' products, the defendants should bear the production burden. When the defendants failed to provide the evidence without proper reasons, the presumption should be that the plaintiff's claims were true. The Higher People's Court affirmed the ruling. Weifang Henglian Jiangzhi Co., Ltd. appealed to the Supreme People's Court, which dismissed the appeal request. According to the Supreme People's Court, where the defendants refused to cooperate with the lower court's evidence collection procedures, a conclusion could reasonably be drawn that the defendants have infringed the plaintiff's patent.